

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1447 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
(Sr.No. 1 to 5 : No)

SUNITA GAGAN NAGIN CHHARA

Versus

ASSISTANT POLICE COMMISSIONER

Appearance:

MR KR JANI for Petitioner

MR UA TRIVEDI, ASSTT.PUBLIC PROSECUTOR for Respondent No. 1

SERVED for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 05/12/96

ORAL JUDGEMENT

1. This Special Criminal Application under Article 226 and 227 of the Constitution of India has been filed by Sunita Gagan Nagin Chhara, challenging the order of externment dated 14/05/1996 passed against her husband Nagin Chhara by the Deputy Police Commissioner (Control) - Ahmedabad city under the provisions of section 56(b) of the Bombay Police Act and confirmed by the order dated

17/08/1996 passed by the Deputy Secretary, Department of Home, Government of Gujarat, at Gandhinagar.

2. It appears that the respondent No.1 - Assistant Police Commissioner, "F" Division, Ahmedabad issued a notice dated 02/03/1995 under section 59 of the Bombay Police Act to show cause as to why the externment proceedings be not taken against him under the provisions of section 56(b) of the Bombay Police Act. It is alleged in the notice that externnee is a dangerous and desperate person, as he is engaged in anti social activities viz. demanding money under threats and showing knife to the public. It is also alleged that externnee is carrying such anti social activities in the areas of Devilal Bazaar, Santram market, Railway crossing and Rajvir Circle. It is further alleged that a case No.111/93 has been registered at Sardarnagar police station u/s 143, 147, 337, 395 and 504 of IPC against the externnee. The externnee, in response to the said notice, appeared before the said authorities and denied the allegations. He also examined 14 witnesses in his support. The last witness was examined on 30/12/1995. After the last witness being examined, the matter was posted for hearing on 16/02/1996. The arguments were heard on the said day and the impugned order of externment is passed on 14/05/1996. An appeal was preferred against the said order of externment which was rejected by the order dated 17/08/1996 passed by the Deputy Secretary.

3. It is contended by the learned counsel that there is an inordinate delay in passing the externment order by the externing authority and therefore, the order of externment should be quashed. The petitioner has taken this specific ground in para- 7(vii). This contention was also raised before the appellate authority. The appellate authority rejected the petitioner's contention on the ground that the externing authority viz. Deputy Police Commissioner - Ahmedabad is a busy officer and therefore, the time taken by him in passing the impugned order cannot be said to be unusual.

4. Learned AGP has supported the judgement passed by the appellate authority. He submits that the externnee had examined as many as 14 witnesses and further, there was a bulky record and therefore, for proper application of mind, it was necessary for the externing authority to take some time. He further submits that, as the Deputy Police Commissioner is a busy officer and he has to discharge number of onerous duties and in the facts of the case, three months time taken in passing the impugned

order for final hearing, cannot be said to be unusual and that should be considered as sufficient explanation for the delay. Learned AGP also submits that some time may be given for filing the affidavit of the externing authority to explain the delay in question.

5. Having considered the rival contentions of the parties, in my view, there is an apparant error on the face of the record inasmuch as the appellate authority, without any explanation given by the externing authority, has assumed certain grounds for the delay in passing the impugned order of externment. There is nothing on record to show that any explanation was given before the appellate authority explaining the delay, inspite of the fact that the specific ground was taken in the memo of appeal.

6. At this stage, it is submitted by the learned AGP that the Deputy Police Commissioner had no opportunity to file an affidavit before the appellate authority, as the appeals are not normally decided after hearing the representatives of the Deputy Police Commissioner. Such a contention cannot be entertained from the mouth of the counsel for the State Government as the appeal was heard by none else but by the officers of the Department of Home itself. It is for them to make an appropriate arrangement and even if there is any such lacuna, they must evolve a system for it. It goes without saying that the externment orders curtails the freedom of the movement of a citizen and as such, authorities are expected to act promptly and if there is any delay in the matter, the benefit will go to the party concerned, unless it has been satisfactorily explained. I am fortified in my view by the decision of the Division Bench of this Court reported in 1992 (2) GLH pg 457 and 30 (1) GLR pg 63.

7. In view of the aforesaid, this Special Criminal Application is allowed. The impugned order of externment dated 14/05/1996 and the order of confirmation by the appellate authority dated 17/08/1996 are quashed and set aside. Rule is made absolute accordingly.

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